No. 481

FLORIDA CITRUS COMMISSION, GROWERS AND SHIPPERS LEAGUE OF FLORIDA, CHASE AND COMPANY, ET AL., APPELLANTS,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

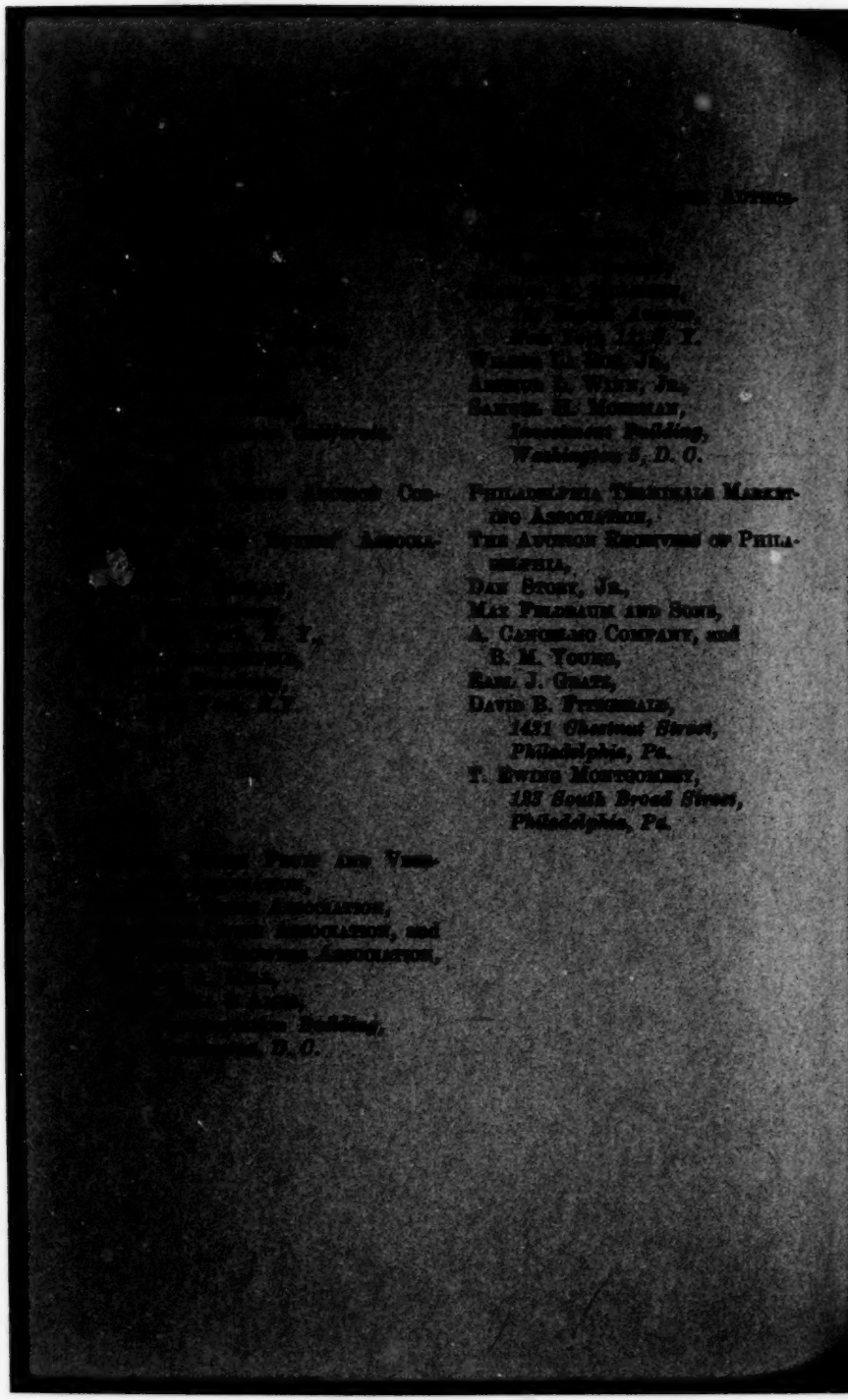
STATEMENT AS TO JURISDICTION

(S.) M. W. Wells,
Mahoney, Vocelle & Wells,
1207 Florida Bank Building,
Orlando, Florida,
Attorneys of record for appellants Florida Citrus Commission, Growers and Shippers League of Florida, Chase and Company, Florida Fruit Company, and [illegible] Packing Cooperative, Inc.

Mahoney, Vocelle & Wells,
1207 Florida Bank Building,
Orlando, Florida,
Of Counsel.

The City of New York,
Dennis M. Hickey,
Corporation Counsel,
James J. Tompkins,
G. Gary Sohn,
Assistant Corporation Counsels,
Municipal Building,
New York 7, N. Y.

[counsel for other appellants]



PHILADELPHIA TERMINAL MARKETING ASSOCIATION,
THE ATHENIUM ARCHIVISTS OF PHILADELPHIA,
DAN STORY, JR.,
MAX FELDBAUM AND SONS,
A. CATONSVILLE COMPANY, and
E. M. YOUNG,
KARL J. GRATZ,
DAVID B. FITZGERALD,
1431 Chestnut Street,
Philadelphia, Pa.
T. EWING MONTGOMERY,
123 South Broad Street,
Philadelphia, Pa.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 481

FLORIDA CITRUS COMMISSION, GROWERS AND SHIPPERS LEAGUE OF FLORIDA, CHASE AND COMPANY, ET. AL., *Appellants,*

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

Florida Citrus Commission, Growers and Shippers League of Florida, Chase and Company, Nevins Fruit Company, and Dr. P. Phillips Cooperative, as Plaintiffs, and The City of New York, The Port of New York Authority, California Citrus League, California Grape and Tree Fruit League, Philadelphia Terminals Marketing Association, The Auction Receivers of Philadelphia, Dan Storey, Jr., Max Feldbaum and Sons, A. Cancelmo Company, B. M.

Young, New York Fruit Auction Corporation, United Fruit Buyers' Association Inc., United Fresh Fruit and Vegetable Association, Idaho Shippers Association Inc., National Onion Association, and Western Growers Association, as Intervening Plaintiffs, submit this statement in compliance with Rule 2 of the Rules of the Supreme Court of the United States.

1. Basis of Jurisdiction

This appeal is from the final judgment of a Three-Judge District Court dismissing the complaint which sought to enjoin, annul and set aside orders of the Interstate Commerce Commission.

(a) Statutory Provisions.

The jurisdiction of the Supreme Court to review the final judgment of the District Court of the Southern District of Florida by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b). See Appendix A.

(b) Date of Judgment.

The Final Judgment of the District Court was entered on August 31, 1953.

(c) Date of Application for Appeal.

The application for appeal herein was duly presented to the District Judge on October 28th, 1953.

(d) Cases Sustaining Jurisdiction.

The jurisdiction of the Supreme Court to review, on appeal, the final judgment of the District Court, is sustained by many cases including the following:

> Louisville & Nashville Railroad Company et al. v. United States of America, et al., 242 U. S. 60, 61 L. ed. 152, 37 S. Ct. 61.

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North Carolina v. United States, 325 U. S. 507, 89 L. ed. 1760, 65 S. Ct. 1260.

United States v. United States Smelting, Refining & Mining Company, 339 U. S. 186, 94 L. ed. 750, 70 S. Ct. 537.

2. Nature of Case

This case involves the validity of unloading charges on carlot shipments of fresh fruits and vegetables delivered by the railroads at New York, N. Y., and Philadelphia, Pa.

As stated in the opinion below by District Judge De Vane, "The record in this case discloses it is the desire of the carriers affected to have the same unloading practices in effect at Philadelphia that are in effect at New York, and I will, therefore, confine this dissent to the situation at New York." The basic principles involved relate to both New York and Philadelphia, and, for brevity, this statement will give details only as to New York.

Since the advent of rail transportation, there had never been any separate charges for unloading carlot shipments of fresh fruits and vegetables at New York, N. Y., or at Philadelphia, Pa., until November 1, 1948. In 1947, for the first time, the terminal or delivering rail carriers filed tariffs with the Interstate Commerce Commission publishing new charges for unloading at those two destinations. The unloading charges were to accrue to the delivering carriers, and the originating and intermediate carriers did not join in publishing the new additional unloading charges. No unloading charges on any other commodities at those destinations were proposed. Upon protests and requests for suspension filed by the plaintiffs and others, the Interstate Commerce Commission suspended the tariffs and entered upon an investigation concerning the lawfulness of the proposed unloading charges. Testimony of the parties was taken by an Examiner, oral argument of counsel was heard by Division 3 of the Commission on October 3, 1947,

an additional oral argument was heard by the full Commission on May 5, 1948, and on October 4, 1948, the Report of the Commission was issued in that proceeding known as Investigation and Suspension Docket No. 5500, Unloading Charges on Fruits and Vegetables at New York and Philadelphia. The report of October 4, 1948, is published in 272 I. C. C. beginning at page 648. Thereby, the Commission concluded that "the schedules under investigation are just and reasonable." The unloading charges thus approved by the Commission went into effect on November 1, 1948, pursuant to said report, and were $1.50 per net ton on citrus fruits and vegetables (fresh or green, not cold pack or frozen), $1.75 on fresh fruits other than citrus, and $2.00 per net ton on melons (including cantaloupes), and vegetables fresh or green, not cold pack or frozen, when top icing or body icing is used, except that the November 1, 1948 charges were the original amounts increased by 30% to $1.95, $2.38 and $2.60 respectively, reflecting the general increases of October 6, 1947, under Ex Parte No. 166, Increased Freight Rates 1947, 269 ICC 33 and 270 ICC 81, 93 and 403.

Many petitions for rehearing and for reconsideration were filed, and finally by its order of June 9, 1949, the Commission reopened the proceeding for rehearing. Additional testimony was taken before the Examiner in September 1949, briefs were filed, and in May 1950 a proposed report of the Examiners was served, which recommended that the Commission find that the unloading charges are unjust and unreasonable. Additional oral argument was heard by the Commission on July 24, 1950. On October 10th the Commission issued a Notice stating: "upon further consideration of the record in the above entitled proceeding, it appears that the record is deficient in respect of certain evidence which seems to be important, and the proceeding will be assigned for further hearing."

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At the further hearing, additional testimony was presented before the Examiner. After briefs, the second report on further hearing was issued by the Examiner, (in August 1951), again recommending that the Commission should find that the unloading charges were not shown to be just and reasonable, and that they are also in violation of section 3(1) of the Act. Exceptions thereto were filed by the railroad respondents, to which the plaintiffs (as protestants) replied. Further oral argument was heard by the Commission on September 26, 1951. On May 7, 1952, the "Report of the Commission on Rehearing and Further Hearing" was issued, 286 I. C. C. 119. The May 7th Report found "that the charges under consideration for unloading fruits and vegetables at New York and Philadelphia are not shown to be just and reasonable." The tariff schedules were ordered cancelled. However, the report further stated that the cancellation of the tariff and the discontinuance of the proceeding would be "without prejudice to the establishment of charges in conformity with the views expressed herein." Such views were: (286 ICC 141) "Upon consideration of these and other circumstances of record we conclude that the shippers should not be forced to pay more than $1.05, $1.35, and $1.65 per ton in lieu of the charges of $1.95, $2.28, and $2.60, respectively, now in effect."

The order of the Commission dated May 7, 1952, in conformity with the report, required the railroads on or before July 3, 1952 to cancel the tariffs naming the unloading charges (first effective November 1, 1948) and discontinuing the proceeding. Thereafter, the charges were cancelled. However, the railroads filed new tariffs effective July 3, 1952, stating new charges (lower than the cancelled charges) in the amounts to which the Commission referred in its report—"without prejudice to the establishment of charges in conformity with the views expressed herein."

Two formal complaints were filed with the Commission by Florida Citrus Commission et al. against the railroads, one being Docket No. 31105 attacking the unloading charges at New York, N. Y., and the other being Docket No. 31106 attacking the unloading charges at Philadelphia, Pa. Both complaints similarly alleged that the new unloading charges were unjust and unreasonable in violation of section 1 of the Interstate Commerce Act because extortionate in that they represent duplicate payment for the same service, the compensation for the unloading service having long been included in the line-haul rates. The railroad defendants therein moved to dismiss the complaints, and without any hearing or taking of testimony (but after replies by complainants to the railroads' motions to dismiss) the Commission entered its order of December 15, 1952, dismissing the complaints. Such order recited that the complaints "assail on substantially the same grounds the unloading charges approved in said report (of May 7, 1952 in I. & S. No. 5500) and published by the defendants."

On March 3, 1953, the complaint in the case at bar was filed in the District Court for the Southern District of Florida, seeking to annul and set aside the order of May 7, 1952, in I. & S. Docket No. 5500 insofar as it approved and authorized the establishment of unloading charges aforesaid, and to annul and set aside the order of December 15, 1952, dismissing the complaints in Dockets Nos. 31105 and 31106.

There is no all-rail line into Manhattan for the delivery of freight, except that of the New York Central. Because of the geographical location of New York, therefore, freight consigned to that point must be moved thereto by car floats or lighters across the Hudson River from the New Jersey side (except only traffic routed over the New York Central). Fruits and vegetables from Florida, California and Texas

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(the principal producing areas of citrus fruits and winter vegetables) are delivered at New York pier station terminals of the Pennsylvania Railroad and Erie Railroad (a very few being delivered at the pier station of the Baltimore and Ohio Railroad). Carloads of fruits and vegetables arriving at the New Jersey rail terminals, consigned to New York, are moved onto car floats equipped with tracks, and transported by tugs across the Hudson River. Nearly all of them are placed alongside the piers equipped for handling of such traffic, viz: the fruit and vegetable pier station terminals, where the freight is unloaded by the carriers and placed on the pier platform for delivery to the consignee.

The pier station terminals are used not only for delivery of fruits and vegetables, but also for delivery of shipments of other commodities. All shipments are unloaded by the carriers from the cars (the cars remaining on the car floats) onto the pier floor. No unloading charges are assessed nor have any been published to apply on any shipments except fruits and vegetables.

"So expeditious is the unloading service that it permits of the use of the same platform space for unloading and stacking freight two and sometimes three times each night on which unloading is performed." 286 ICC 124, 125. "There are no physical means by which consignees' trucks can reach the car floats. Consignees have, however, access to the cars on the car float for the purposes of inspection, but they are not permitted to take delivery of their freight from that facility. The pier floor is the first place where, after the freight has been unloaded, delivery can be taken."

"It would be impracticable, if not impossible, to expand rail facilities on Manhattan to the extent necessary to accord team-track delivery on the volume of fruits and vegetables consigned to New York. The high cost of land on

Manhattan Island and the time required for handling cars across float bridges during periods of peak volume of traffic, would render team-track delivery impracticable." (286 ICC 130.)

Originally, the method of delivery at New York, that is the unloading by the carriers onto the pier floor before the shipment was available for receipt by the consignee, was established by the carriers for their own convenience and because of the lack of team-track facilities on Manhattan to make a team-track delivery. The freight rate, or line-haul transportation charges, has always included and paid for the transportation to and delivery by the railroads on the pier station floor.

Never, before November 1, 1948, had any unloading charges (in addition to the line-haul freight charges) been assessed on fruits and vegetables delivered at New York and Philadelphia. The unloading charges which went into effect on November 1, 1948 (pursuant to the Commission's report of October 4, 1948, in I. & S. Docket No. 5500, 272 ICC 648) were ordered cancelled by the Order of May 7, 1952 (report in 286 ICC 119), because the Commission there found that they were "not shown to be just and reasonable."

The new unloading charges of July 3, 1953 (which the Commission in its report of May 7, 1952 referred to: "without prejudice to the establishment of charges in conformity with the views expressed herein") are in effect solely because of the Order of May 7, 1952 and the orders of December 15, 1952, dismissing the complaints in Dockets Nos. 31105 and 31106.

Yet, the Commission has never made a finding that the unloading service is one beyond the point at which the line-haul or carrier service ends. On the contrary, the fact is and the finding of the Commission in the report of October

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4, 1948 (272 ICC 648) was: "Delivery to the consignee is not effected until after the cars are unloaded and the lading placed at a convenient location on the pier floor" (272 ICC 654, 655). Again, in the report of May 7, 1952 (286 ICC 119), it was specifically found that: "Respondents do not accord the consignees the option of performing the unloading" (286 ICC 123), and "the pier floor is the first place where, after the freight has been unloaded, delivery can be taken" (286 ICC 125).

3. Rulings of Three-Judge District Court

The majority opinion, the dissenting opinion of one Judge, and the final judgment of the District Court dismissing the complaint seeking to enjoin, annul and set aside the orders of the Interstate Commerce Commission, is appended hereto as Appendix B.*

The opinion of Circuit Judge Louie W. Strum (concurred in by District Judge William J. Barker) concluded that "The Commission has clearly acted within its statutory authority; its proceedings have been conducted consistently with due process; its findings are adequate and supported by substantial evidence."

The dissenting opinion of District Judge Dozier A. DeVane concluded that the unloading charges were unjust and unreasonable, unjustly discriminatory and unduly preferential, and that the Commission's order was illegal and should be set aside.

The majority opinion includes the following statements:

> "Substantially all carload shipments of fresh fruits and vegetables destined to New York City from the South and West are brought to the Jersey side of the Hudson River, and the freight cars, with their cargoes

* (Clerk's Note.—The judgment and opinion are printed as an Appendix to the Jurisdictional Statement in No. 480 and is not reprinted here.)

intact, are then ferried across the river on car floats. There are two methods of delivery on the New York side. One is to switch the railroad cars from the car floats to team tracks located on land in lower Manhattan, where the consignees unload the railroad cars and place the cargo directly onto trucks. There is no separate charge for these deliveries.

"By the other method, with which we are here concerned, the railroad cars are not switched to land tracks, but remain on the car floats which are placed alongside unloading piers where the carriers unload the cars, placing the contents on the floor of the pier station, where they are picked up by the consignees. The consignees are not allowed to unload the freight cars themselves, as they do on the team tracks, as it is physically impossible to place the consignee's trucks alongside the car floats. The carriers therefore unload the cars, the consignees having access to shipments only after they have been unloaded and placed on the floor of the pier stations. Approximately 75% of the total traffic is handled in this manner, as the team tracks can accommodate only about 25% of the traffic, and it is not feasible to expand them.

"* * * No delivery charges are imposed for other types of commodities unloaded at the pier stations in like manner as fresh fruits and vegetables. Prior to November 1, 1948, the carriers also unloaded fresh fruits and vegetables at pier stations without additional charges.

* * * * * * *

"It is not essential that the Commission first review in detail the line haul rates before allowing the unloading charges under consideration. What the Commission is really deciding here is, not the adequacy or inadequacy of line haul rates to cover the unloading service, but where the carrier's line haul service ends, and whether unloading is a justifiable additional service, of value to the consignee, for which he should pay at least a part of the cost. * * *"

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4. Questions Involved Are Substantial

There have been two reports by the Commission, two proposed reports by Examiners of the Commission, and the decision of the District Court.

The first report of the Commission, October 4, 1948, 272 ICC 648, concluded that the tariffs publishing the unloading charges were "just and reasonable." Six commissioners concurred in that report, one did not participate in the disposition of the proceeding, and four commissioners dissented. However, the report of the majority specifically found (272 ICC 654, 655):

> "A reasonable and proper conclusion as to when the unloading ceases and other operations begin, is that the unloading has been concluded when the produce is ready and available for actual delivery to the consignee. The shippers are not permitted access to the cars, and their trucks can come onto the pier floor only at specified times. Delivery to the consignee is not effected until after the cars are unloaded and the lading placed at a convenient location on the pier floor. It is clearly indicated that it is impracticable for the shippers to perform the actual unloading operations."

In May, 1950, the Report on Rehearing proposed by Russell M. Brown and M. J. Walsh, Examiners, recommended that "on rehearing the Commission should find that the charges assailed for unloading fresh fruits and vegetables, in carloads, at New York and Philadelphia, are unjust and unreasonable." There were specific findings of fact therein as follows:

> "There is no question with respect to the applicability of the line-haul rates from the various points of origin to New York. The principal question for determination is what constitutes delivery of the freight by respondent to the consignee or receivers, and the time when and the particular location at which it is

> concluded. Delivery of carload freight consists of the carrier either placing the car on a team track or siding where it can be unloaded by the consignee, or where the consignee is not permitted to perform the unloading, as in this proceeding, in unloading the freight from the cars on the floats and placing it on the floor of the pier. Here, and here only, does the transportation obligation of the carrier end. That obligation is not fulfilled until the freight is placed in a location conveniently accessible to the consignee. This method of delivery of fresh fruits and vegetables, has, for more than 50 years, been included in the line-haul rates from the various origins to New York piers on such traffic. And it must be so included because the transportation service is not completed until delivery has been made. Section 1(3) of the act defines transportation to include, among other things, all services in connection with delivery of the property transported."

Subsequent to the above proposed report, oral argument was heard by the full Commission on July 24, 1950. But no report was issued. Instead, the Commission's Notice of October 10, 1950, was issued:

> "Upon further consideration of the record in the above-entitled proceeding, it appears that the record is deficient in respect of certain evidence which seems to be important, and the proceeding will be assigned for further hearing."

At that point, the tariff should have been ordered to be cancelled, pursuant to section 15(7) of the Interstate Commerce Act.

In May, 1951, the Second Report on Further Hearing proposed by M. J. Walsh, Examiner, recommended that "upon further hearing the Commission should find that the charges under consideration, for the unloading of fruits and vegetables at New York and Philadelphia, are not shown to be just and reasonable, and that they are also

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in violation of section 3(1) of the act." Specific findings of fact therein included the following:

"As stated, transportation includes delivery of the property to the consignee. Delivery may be accomplished by placing the car on a team track or siding customarily used for that purpose within convenient reach of the consignee at the particular station or facility to which the traffic is billed and to which the rate charged applies, or, as in the instant proceeding, where the car cannot be placed at a convenient point at the particular billed destination at which the consignee may accept delivery and perform the unloading, of the carrier unloading the freight and placing it at a particular location on the pier or station platform where delivery can be made to the consignee. Prior to November 1, 1948, the latter method of delivery of fruits and vegetables to the consignees at the several pier stations in New York and at certain stations in Philadelphia had been voluntarily maintained and performed by respondents for a period approximating 50 years. Respondents do not propose to discontinue these stations as regular and complete terminal facilities.

"The unloading of the freight by respondents at their New York pier stations was for the purpose of making simple delivery of the property to the consignees. Because of the fact that the consignees were denied access to the cars on the carfloats for the purpose of accepting delivery and of unloading the freight, delivery of the freight to the consignees at those pier stations could not be accomplished in any other manner. The unloading, which necessarily preceded the delivery of the freight to the consignee, was essential to that purpose, and therefore was included in the transportation of the property and the rate applicable thereto. The unloading of the freight by the carrier onto the pier platform is due to the physical inability of the carrier to make delivery of the freight to the consignee at billed destination, without performing such unloading. Such inability is clearly a carrier disability for which con-

signees should not be subjected to additional unloading charges. In the case of team-track delivery the car is placed on a team track and the consignee's truck is backed up to the car door. This cannot be done at pier stations because, as respondents admit, it is necessary to refuse consignees access to the carfloats for delivery of their freight. It is admitted by respondents that because of this disability the freight is not actually delivered to the consignee until it is placed on the pier floor. Delivery under the line-haul rates is not completed until the freight is placed in a location accessible to the consignee.

* * * * * * *

"The pier stations at New York are complete terminal facilities to which through rates on fruits and vegetables are specifically named in respondents' tariffs. Those rates cover the entire transportation of the traffic consisting of line-haul and terminal operations, including unloading of the freight in order to make simple delivery to the consignee.

"Delivery of freight to the consignee must be made at a reasonably convenient and accessible point. Delivery of fruits and vegetables specifically billed to certain New York pier stations for consignees in Manhattan cannot properly be made at Jersey City or other locations intermediate to Newark, N. J., because these latter points are not the destinations to which the traffic is billed.

"The preponderance of the volume of fruits and vegetables destined to New York is handled by the Erie, and the Pennsylvania. * * *

"Nor can it be successfully argued that the through rates in effect prior to November 1, 1948, did not include the charges for the unloading of the freight by respondents, because respondents have continued to perform such unloading without charge in respect of other commodities at the identical New York pier stations at which charges are collected for unloading fruits and vegetables. For instance, canned fruit juices originating at points in Florida are unloaded with-

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out additional charge, other than the line-haul rate, at the same New York piers at which charges are collected for unloading fruits and vegetables. As there is keen competition between fresh fruits and fruit juices in household consumption, the assailed unloading charges are unduly prejudicial to fresh fruits and unduly preferential of fruit juices in violation of section 3(1) of the act. * * *''

In the final report of May 7, 1952, 286 ICC 119, the Commission concluded "that the charges under consideration for unloading fruits and vegetables at New York and Philadelphia are not shown to be just and reasonable, and the schedules naming the assailed unloading charges will be ordered canceled and the proceeding discontinued." However, such conclusion that the charges be canceled was stated to be "without prejudice to the establishment of charges in conformity with the views expressed herein," viz: unloading charges in the amounts thereafter published to become effective on July 3, 1952, and which were assailed in the complaints in Dockets Nos. 31105 and 31106. One commissioner did not participate in the disposition of the proceeding under the report of May 7, 1952, one commissioner dissented (286 ICC 142-145); and three commissioners joined in the special concurrence that they fully agreed "with this report to the extent that it reverses the prior report, in which I dissented," and stating further that they "went along" with "the additional ultimate findings in this present report only because they afford some immediate relief to shippers in that the unloading charges here approved are substantially lower than the proposed charges which have been applied on this traffic since November 1, 1948, pursuant to the findings in the prior report."

It is important to note that nowhere in the report of May 7, 1952, is there any finding of fact that the unloading service is something additional to the line-haul transporta-

tion, that it is not a necessary part of delivery required under the line-haul rate, or that the point at which line-haul transportation has terminated is reached prior to the unloading. On the contrary, the specific findings of fact are made that:

> "Respondents do not accord the consignees the option of performing the unloading." (286 ICC 123.)
>
> "There are no physical means by which consignees' trucks can reach the car floats. Consignees have, however, access to the cars on the car float for the purposes of inspection, but they are not permitted to take delivery of their freight from that facility. The pier floor is the first place where, after the freight had been unloaded, delivery can be taken." (286 ICC 125.)

The chief purpose of the interstate commerce act has been to secure uniformity of treatment to all and to suppress unjust discriminations and undue preferences. A multitude of decisions of the Supreme Court have emphasized and applied this basic principle,—e.g. *Kansas City Southern R. Co.* v. *C. H. Albers Commission Co.*, 223 U. S. 573, 32 S. Ct. 316, 56 L. ed. 556.

Throughout the United States the "line-haul carload rate comprehend(ed)(s) receipt and delivery". An additional charge may be made when an additional service is given. But the service here given is not additional to that for which the rate pays. If the shipper pays for team-track delivery and does not receive it, but asks instead and is given a side track delivery, which costs the carrier no more, he may not be compelled to pay an additional charge upon the assumption that he has received a terminal team-track service which has not ben given." See *Los Angeles Switching Case, Interstate Commerce Commission* v. *Atchison, T. & S. F. R. Co.*, 234 U. S. 294, 58 L. Ed. 1319.

In the more recent decision of *United States* v. *United*

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States Smelting, R. & M. Co., 339 U. S. 186, 94 L. Ed. 750, 70 S. Ct. 537, in the opinion by Mr. Justice Minton it is said:

> "The Commission undertook its general investigation, Ex parte 104, in the interest of establishing a uniform and equal service for shippers. The Commission concluded that carrier obligation for transportation service ends customarily when delivery is made at a convenient point on the siding inside or outside a consignee's plant. This delivery is such as may be accomplished in one continuous movement without 'interruption' occasioned for the convenience of the industry, and is only the equivalent of team track or simple placement switching. In the Commission's view as developed in Ex Parte 104, such a convenient delivery point marks the beginning and end of what is termed 'line-haul' transportation, and is the extent of the service which may be performed under the line-haul rate."

We do not question the right of the Commission to make findings of fact to determine the point at which the line-haul transportation ends. "Delivery to Point X is the equivalent of team track and simple placement service—the service other shippers receive under a line-haul rate." (339 US 195.) In the case at bar, I. & S. No. 5500, the Commission has found that "Point X" is the pier station floor, after unloading by the carriers. Until the shipment reaches Point X which is the pier station floor, there is no delivery and the service under the line-haul rate is not complete until that point is reached. Indeed, such finding of fact is the same as in many other proceedings before the Commission, such as (for California fruits and vegetables) *Erie Railroad Co.* v. *Alabama & Vicksburg Railway Co.*, decided April 30, 1925, 98 ICC 268, 272:

> "At Duane Street the Erie unloads the contents of the car, sorts the fruit and vegetables according to variety, quality, and size, and piles the packages in

> the space set aside on the pier for each particular consignee. At that point the consignee takes delivery."

And (for Florida fruits and vegetables), Allowances for Stacking Fresh Fruits and Vegetables at New York, N. Y., decided December 19, 1931, 179 ICC 780, 784:

> "* * * respondent undertakes to make delivery in spaces assigned to the consignees on the piers, and its stevedores stack the packages in those spaces. It appears from this record that at that point respondent has fulfilled its legal obligation as to delivery."

Having determined the facts as to when delivery is accomplished, and having made no determination that unloading at these destinations is a service additional to the line-haul transportation, it was the plain duty of the Commission to cancel all unloading charges. There was no finding, and indeed no showing, that the aggregate of the unloading charges and the line-haul charges would be just and reasonable and otherwise lawful. Yet, the Interstate Commerce Commission failed to apply the plain standards of the Interstate Commerce Act to the facts as found, and instead acted arbitrarily and contrary to the Act in adopting standards not authorized by the Act and announced conclusions not warranted by its findings of fact.

Not only are the plaintiffs seriously aggrieved by the orders of the Commission and the final judgment of the District Court dismissing their complaint, but also the questions presented by this appeal are substantial and are of considerable public importance.

Respectfully submitted,

(S.) M. W. Wells,
Maguire, Voorhis & Wells,
1007 Florida Bank Building,
Orlando, Florida,
Attorney of record for the Plaintiff and Intervening Plaintiffs named.

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FLORIDA CITRUS COMMISSION,
GROWERS AND SHIPPERS LEAGUE OF FLORIDA,
CHASE AND COMPANY,
NEVINS FRUIT COMPANY, and
DR. P. PHILLIPS COOPERATIVE,
M. W. WELLS,
Of Counsel,
MAGUIRE, VOORHIS & WELLS,
1007 Florida Bank Building,
Orlando, Florida.

CALIFORNIA CITRUS LEAGUE,
CALIFORNIA GRAPE AND TREE FRUIT LEAGUE,
JOHN F. DONELAN,
PRESTON B. KAVANAUGH,
DICKSON R. LOOS,
707 Munsey Building,
Washington 4, D. C.,
WALTER HOFFMAN,
Balboa Building,
San Francisco, California.

NEW YORK FRUIT AUCTION CORPORATION,
UNITED FRUIT BUYERS' ASSOCIATION, INC.,
EDWARD I. KAPLAN,
280 Broadway,
New York, N. Y.,
JULIUS BLUMENFELD,
320 Broadway,
New York, N. Y.

UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION,
IDAHO SHIPPERS ASSOCIATION,
NATIONAL ONION ASSOCIATION, and
WESTERN GROWERS ASSOCIATION,
WILMER A. HILL,
AMES, HILL & AMES,
Washington, D. C.
Transportation Building,

THE CITY OF NEW YORK,
DENNIS M. HURLEY,
Corporation Counsel;
JAMES J. THORNTON,
G. GARY SOUSA,
SIDNEY BRANDES,
Municipal Building,
New York, N. Y.

THE PORT OF NEW YORK AUTHORITY,
SIDNEY GOLDSTEIN,
General Counsel;
FRANCIS A. MULHERN,
111 Eighth Avenue,
New York 11, N. Y.
WILBUR LA ROE, JR.,
ARTHUR L. WINN, JR.,
SAMUEL H. MOERMAN,
Investment Building,
Washington 5, D. C.

PHILADELPHIA TERMINALS MARKETING ASSOCIATION,
THE AUCTION RECEIVERS OF PHILADELPHIA,
DAN STOREY, JR.,
MAX FELDBAUM AND SONS,
A. CANCELMO COMPANY, and
B. M. YOUNG,
EARL J. GRATZ,
DAVID B. FITZGERALD,
1421 Chestnut Street,
Philadelphia, Pa.
T. EWING MONTGOMERY,
123 South Broad Street,
Philadelphia, Pa.

APPENDIX "A"

28 United States Code, sec. 1253:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

28 United States Code, sec. 2101(b)

> "Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final."

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